the old corporation, becomes liable for the debts of the corporation under a statute imposing a double liability upon stockholders.

PRIVY EXAMINATION OF MARRIED WOMAN BY TELEPHONE AS TO HER EXECUTION OF A DEED.

Very few adjudicated cases are to be found in the books upon this exact point because of the fact that certificates of acknowledgement are usually conclusive of the facts contained therein.

The acknowledgement is no part of the deed itself and the certificate is sufficient if it shows that the requirements of the statute have been in substance complied with. *Burbank v. Ellis,* 7 Neb., 156, 164. And the failure of the notary to make a proper certificate of acknowledgement will not invalidate the deed. *Linderman v. Axford,* 56 N. Y. Supp., 456. It has reference to the proof of the execution, not to the force of the deed itself, especially where third parties are concerned. *Murray v. Beal,* 65 Pac. (Utah), 726. What constitutes an acknowledgement is well defined in *Steers v. Kinsey,* 68 Ark., 360.

In a recent case, *Wester v. Hurt,* 130 S. W. (Tenn.), 842, the wife had joined with her husband in a deed of trust of her land to secure the debts of their son. In an effort to avoid the enforcement of the deed, it was proved that the privy examination of the wife, as required by statute, had been taken by the notary over a telephone. The court held that this was not a compliance with the statute, and that the deed was therefore void.

Opposed to this decision is the case of *Banning v. Banning,* 80 Cal., 271. This was an action for the partition of land. At the time of the making and acknowledging the deed, the defendant was a married woman and her acknowledgement was taken by a notary through a telephone while she was three miles away. It was contended that the woman not being visibly present and therefore not personally present before the notary at the time, that the deed had not been executed and therefore the plaintiff could claim no title. But the court declared that in the absence of fraud, accident, duress, or mistake, the certificate of the notary in due form of law is conclusive of the material facts therein stated.

The position of the court in this case seems to be supported by the weight of authority. In *Baldwin v. Snowden,* 11 Ohio St., 203, the court held that a regular statutory certificate of the acknowledgement of a deed of conveyance, made by a husband and wife, is, in the absence of fraud, conclusive evidence of the facts stated therein. In a Nebraska case, Smith and Smith were partners in business and secured their accounts with their bank by a mortgage on their homesteads. Their wives signed the mortgages when presented to them by a notary, but later denied that there ever was any formal acknowledgement of their signatures to the notary. The court held that the certificate of an officer having authority to take acknowledgements can not be impeached by showing merely that the officer's duty was irregularly performed. In *Tichenor v. Yankey,* 89 Ky., 508, the court would not permit the defendant to show that the deed had not been voluntarily executed by her even where there was a mistake in the description of the land so that the wrong piece of land was mortgaged. This is the acknowledged rule that the officer's certificate will in the absence of fraud be conclusive in favor of those who in good faith rely upon it. *Bank v. Smith,* 59 Neb., 90. It must be alleged and proved that some fraud has been practiced on the married woman before the court will permit the acknowledgement to be impeached. *Jones on Mortgages,* I, sec. 538.

Perhaps the nearest direct decision affirming the principal case to be found in the books is the case of *Sullivan v. First National Bank,* 37 Tex. Civ. App., 228. In this case, a motion was made for a continuance on account of defendant's sickness. An affidavit was made signed with the defendant's name by his attorney. The clerk's jurat to the affidavit showed on its face that defendant had sworn to it and had authorized its signature over the telephone. The court refused to consider the application on the ground that it could not be properly sworn to over a telephone. But the court very clearly sets forth the fact that the legislature must have had in mind the formalities of an oath when they prescribed the manner in which it should be taken. It says that while the statute does not require that an affidavit to an application be made by the party to the suit, it must be sworn to and the necessary formalities of an oath must attend the administration of the oath. It is necessary to the validity of every oath or affirmation, not alone that it shall be binding on the conscience of the affiant, but that it be made under the pains and penalties of

perjury. The law requires the affiant to be in the personal presence of the officer administering the oath, to the end that he be certainly identified as the person who actually took the oath. The legislature had in mind the meaning of the oath as well as its history. In early times and in other states certain forms and formalities are observed—raising the right hand, laying the hand on the Bible, the Pentateuch, or the Koran—all seeking to bind the conscience of the affiant. These contemplated his presence before the officer. The oath must be administered in a manner in which the affiant could be made to answer to the pains and penalties of perjury in the event that the oath should prove false. In order that prosecutions for perjury may be sustained it is required to be established beyond a reasonable doubt that an oath has been legally made, that the matter sworn to was false in fact, and that the defendant in the prosecution is the one who made the oath. The fact that the clerk recognized the affiant's voice is not sufficient. The clerk must be able in the event of a prosecution for perjury to identify the affiant as the one who signed and swore to the affidavit and to be able to do this would require the affiant's actual personal presence at the time of administering the oath.

The general law of the use of the telephone is set forth in *Central Union Telephone Co. v. Falley,* 10 Am. St. Rep. (Ind.), 114 and note. That the telephone by the necessities of commerce and public use, has become a public servant, a factor in the commerce of the nation and of a great portion of the civilized world, can not be disputed. As telephones are used by all classes of persons for business purposes, some legal effect must be given to conversations held over them. Where both parties resort to this method of communication, they must intend some legal effect to follow. If they are not willing to assume the risks incident to the mode, they should decline to resort to it or to permit others to communicate to them in that manner. *State v. Nebraska Telephone Co.,* 17 Neb., 126. Telephone communications are usually held to be admissible in evidence and even though the voice of the party is not recognized it does not affect the admissibility, but merely the weight of the evidence. *People v. Ward,* 3 N. Y. Crim. Rep., 483, 511.

The courts of justice do not ignore the great improvements in the means of intercommunication which the telephone has made.

Its nature, operation and ordinary uses are facts of general scientific knowledge, of which the courts will take judicial notice as parts of public contemporary history. When a person places himself in connection with the telephone system through an instrument in his office, he thereby invites communication, in relation to his business through that channel. *Wolfe v. Mo. Pac. Ry. Co.,* 97 Mo., 473.

It would seem from the general recognition given by the courts to the telephone as a commercial necessity and the conclusiveness of the officer's certificate of acknowledgement that an acknowledgement and examination of a married woman as to her execution of a deed, if taken over a telephone, could not be impeached for that reason alone.

ESTOPPEL OF THE STATE TO PROSECUTE FOR A CRIME BY REASON OF ITS OFFICERS HAVING ENTRAPPED THE ACCUSED INTO ITS COMMISSION.

In the recent case of *De Graff v. The State,* 103 Pac. (Okla.), 538, the first of its kind since the adoption of the State Constitution, the Oklahoma Criminal Court of Appeals decided that the state may convict an offender of its liquor laws, even though all of the testimony against him was obtained while offering inducements to the defendant to break such law by a person in the employment of the prosecuting officer for that purpose only.

Evidence given by persons who have bought liquor for no other purpose than to obtain evidence against the defendant upon which to base a prosecution, has been given to juries with the charge that they were to examine it with caution and if there was any craft or indirect contrivance in procuring the testimony, they were to examine it with the greatest care and caution. *Commonwealth v. Graves,* 91 Mass., 114. Yet if the evidence was procured by the witness while acting to ferret out crime without guilty intent, his testimony should need no corroboration and such witness should have the same standing as any other. *Wright v. The State,* 7 Tex. App., 574. The case of *Saunders v. The People,* 38 Mich., 218, decided that it is proper to subject the witness to close cross-examination, and though not directly in point, it gives us by analogy some idea of what weight a great